

After reviewing the file compiled to date, the Board finds:

1. Mr. Holman worked for F&H Insulation for several years as an insulation superintendent. He alleges he injured his back at work on November 15, 1998, lifting a bag of insulation.
2. The record does not establish whether Mr. Holman worked after November 15, 1998. Mr. Holman testified that he did not think he did. But Robin Siefkin, F&H's secretary/treasurer, testified that he thought Mr. Holman did work after that date.
3. On November 20, 1998, Mr. Holman told F&H's Robin Siefkin that he did not injure his back at work but only used that as an excuse for staying home. Describing that conversation, Mr. Siefkin testified:

We went outside and basically Bill [Holman] said to me, he said that, you know, he said, "You always said I could come to you if I needed help." And I said, "That's true." And he says, "Well, I need your help." And he says, "I, I screwed up and I stayed home Tuesday and I did cocaine and I just used my back as a reason why I wasn't at work. It wasn't, it wasn't a good reason, and can you help me?" And I said, "Well, number one, we need to get this cleared up. And the way we get it cleared up is to do the company policy, and that's to go see the doctor. Let's get that thing resolved and then we'll just go where the cards go."

4. Because he had reported a work-related injury, Mr. Siefkin sent Mr. Holman to a clinic for evaluation and a urinalysis. While at the clinic on November 20, 1998, Mr. Holman told the doctors and nurses that six days before he twisted his back lifting and moving insulation, that his left leg became numb, and that he was experiencing more pain than usual. He also told them that he had undergone surgery seven years ago, that nothing could be done, and that he did not know why he was there. Notes from that clinic visit and evaluation show that Mr. Holman was diagnosed with a resolving back strain and that he was released to return to work without restrictions.
5. From the medical records introduced at the preliminary hearing, the Board finds that Mr. Holman had a diskectomy and microdissection at the L4-5 level in December 1993. From the history contained in the clinic records dated November 20, 1998, the Board finds that Mr. Holman had ongoing back symptoms before the alleged November 15, 1998 accident.
6. At this time, the record does not contain any medical opinion that the symptoms that Mr. Holman is currently experiencing, or that any medical treatment that he may currently need, is related to the alleged accident at work.

7. At the preliminary hearing, the Judge admitted into evidence an Order dated November 2, 1995, entered by Administrative Law Judge John D. Clark. That document indicates that Mr. Holman falsely testified in an earlier workers compensation proceeding. Because of that false testimony, Judge Clark reduced a \$100,000 award to zero.

8. The Board finds that Mr. Holman has failed to prove that it is more probably true than not that he injured his back as alleged or that any symptoms that he is now experiencing are related to that alleged accident.

CONCLUSIONS OF LAW

1. Workers have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which those rights depend.¹

2. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²

3. Because Mr. Holman has failed to prove that his present complaints are related to an injury that he sustained at work, the request for benefits must be denied.

WHEREFORE, the Appeals Board reverses the May 10, 1999 preliminary hearing Order and denies the request for benefits.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Vincent A. Burnett, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).